

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NORMA LEE ADAMS and
BARRY WAYNE ADAMS,

Plaintiffs,

v.

Case No. 4:05-cv-62

CITY OF MARSHALL, MARSHALL CITY
POLICE, MICHAEL OLSON, MAURICE
EVANS, BRUCE ELZINGA, ANDREW
GROENEVELD, LEE FRIEND, TOM KING,
GAIL M. BUDROW-BRADSTREET, STEVEN
QUIGLEY, VINCE TRUDELL, and JOHN DOE(S)
and JANE DOE(S),

Hon. Wendell A. Miles

Defendants.

OPINION AND ORDER

This matter is presently before the court on Plaintiffs' Notice of Motion for Summary Judgment by Affidavit. Defendants have responded. Plaintiffs contend that Defendants' previously filed Offer of Judgment (docket #108) is an admission of culpability and establishes their liability, and Plaintiffs' recent victory in the Calhoun County District Court concerning a case involving noxious weeds shows that it is highly unlikely that Defendants will prevail in the present case. For the following reasons, the court denies the motion.

First, the Case Management Order in this case directs that all dispositive motions were to be filed by October 1, 2006. (Docket #57). Accordingly, Plaintiffs' motion is untimely.

Secondly, Plaintiffs filed a notice of "non-acceptance" of Defendants' Offer of Judgment. (Docket #110). "An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs." FED. R. CIV. P. 68.

Accordingly, the Offer of Judgment is not evidence in this case.

Finally, the record reveals that Plaintiffs received two citations, or notices of violation, alleging that they were in violation of the City of Marshall's noxious weed ordinance. The two citations concerned different time periods. The first of these two citations is the subject of the present suit. The hearing Plaintiffs received in the Calhoun County District Court pertaining to the second citation, has no relevance to the present case, where the federal question is whether Plaintiffs were denied due process with regard to the first citation, not whether they were in fact in violation of the weed ordinance when the first citation was issued.¹

For the foregoing reasons, the court DENIES the Plaintiffs' Motion for Summary Judgment by Affidavit (docket #112).

So ordered this 2nd day of April, 2007.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge

¹Defendants assert in their response (docket #114), that Plaintiffs' motion is not signed by either Plaintiff. The final page (page 3) of the court's copy of Plaintiffs' motion contains the dated signature of both Plaintiffs.